# Anuar bin Ismail v Tan Sri Tan Chin Tuan & Anor

HIGH COURT (IPOH) — CIVIL SUIT NO 23-336-88
ABDUL MALEK J
12 AUGUST 1991

***Insurance*** *— Total and permanent disablement indemnity — Insurer not informed in writing of accident within stipulated time — Claim invalid*

***Insurance*** *— Total and permanent disablement indemnity — Plaintiff not a party to insurance — Whether plaintiff entitled to claim under policy — Whether on the facts, plaintiff totally and permanently disabled under the policy*

The plaintiff, a professional jockey, sued the first defendant, the controlling body for trainers and jockeys, and the second defendant, the insurers of the first defendant, as a consequence of the plaintiff being medically certified on 4 December 1987 to be permanently disabled and unable to engage in his profession following a fall from the horse he was riding on 20 March 1984.

**Held,** dismissing the plaintiff's claim:

(1) The plaintiff was not a party to the contract of insurance as the parties named therein were the first and second defendants. The plaintiff never paid any premiums and at the most was just a part of the insurable interest under the policy. Since the endorsement to the policy required that the second defendant treat the first defendant as the absolute owner of the policy, the plaintiff had no right to claim under the policy.

(2) The second defendant had never been informed in writing of the accident within 30 days as required under cl 3 of the policy and as such by cl 18 failure to comply with cl 3 would invalidate all claims under the policy.

(3) The plaintiff's claim against the second defendant concerned dismemberment and loss of sight within 182 days of the accident. However when the accident occurred the plaintiff only went to see his doctor the following day. This raised the inference that the injuries were not so serious to warrant an immediate checkup. The plaintiff resumed work on 29 May 1984 and continued working till 29 January 1986. From the facts the plaintiff had not proven that he was totally and permanently disabled such that the second defendant was required to pay him under the policy. Furthermore there were conflicting reports on the nature of the injuries sustained by the plaintiff.

(4) The plaintiff's claim against the first defendant on the ground that he was deprived of the benefit and indemnity under the policy due to the negligence of the first defendant was not sustainable as well. The plaintiff had never informed the first defendant of the accident. Even if there were negligence, the plaintiff had still not proved that the breach caused the loss as the injuries and disablement were not within the scope of the policy.

(5) As to whether the plaintiff could claim directly from the second defendant, on the facts, the first defendant was the absolute owner of the policy and only the first defendant could claim under it and no one else.

**[Bahasa Malaysia summary**

Plaintif, seorang joki profesyenal, memulakan guaman terhadap defendan pertama, badan pengawal pelatih dan joki, dan defendan kedua, syarikat insuran defendan pertama, akibat plaintif disahkan oleh doktor pada 4 Disember 1987 sebagai mengalami kecacatan tetap dan tidak boleh menjalankan profesyennya berikutan daripada kejatuhan dari kuda yang ditunggangnya pada 20 Mac 1984.

**Diputuskan**, menolak tuntutan plaintif itu:

(1) Plaintif bukanlah satu pihak kepada kontrak insuran kerana pihak-pihak yang dinamakan di dalamnya adalah defendan pertama dan kedua. Plaintif tidak pernah membayar sebarang premium dan paling banyak pun cuma merupakan sebahagian daripada kepentingan yang diinsurankan di bawah polisi itu. Oleh kerana pengindorsan kepada polisi itu mengkehendaki supaya defendan kedua mensifatkan defendan pertama sebagai pemunya mutlak polisi itu, plaintif tidak berhak menuntut di bawah polisi itu.

(2) Defendan kedua tidak pernah diberitahu dalam tulisan tentang kemalangan itu dalam 30 hari seperti yang dikehendaki di bawah fasal 3 polisi itu dan oleh itu, mengikut fasal 18, kegagalan menurut fasal 3 akan menjadikan semua tuntutan di bawah polisi itu tidak sah.

(3) Tuntutan plaintif terhadap defendan kedua adalah berkenanaan dengan pemenggalan anggota badan (dismemberment) dan kehilangan penglihatan dalam 182 hari daripada tarkih kemalangan. Walau bagaimanapun apabila kemalangan itu berlaku, plaintif cuma melawat doktornya pada keesokannya. Ini menimbulkan satu anggapan bahawa kecederaannya tidaklah begitu serius untuk memerlukan rawatan segera. Plaintif bekerja semula pada 29 Mei 1984 dan terus bekerja hingga 29 Januari 1986. Mengikut fakta kes plaintif tidak membuktikan bahawa beliau ditimpa kecacatan penuh dan tetap supaya defendan kedua diwajibkan membayarnya mengikut polisi itu. Lagipun, terdapat laporan-laporan yang bercanggahan tentang kecederaan yang dialami oleh plaintif.

(4) Tuntutan plaintif terhadap defendan pertama atas alasan bahawa beliau telah kehilangan faedah dan tanggung rugi di bawah polisi itu akibat kecuaian defendan pertama tidak boleh disokong juga. Plaintif tidak pernah memberitahu defendan pertama tentang kemalangan itu. Biarpun terdapat kecuaian, plaintif masih belum membuktikan bahawa kecuaian itu mengakibatkan kehilangan itu kerana kecederaan dan kecacatan itu tidak termasuik di dalam lingkungan polisi itu.

(5) Berkenaan soalan sama ada plaintif boleh menuntut terus terhadap defendan kedua, mengikut fakta kes, defendan pertama adalah pemunya mutlak polisi itu dan cuma defendan pertama boleh menuntut di bawahnya dan bukan sesiapa lain.]

[*Editorial Note*: The plaintiff has appealed to the Supreme Court vide Civil Appeal No 02-305-1991.]

**Cases referred to**

1 *Worsley v Wood & Ors* [1796] 3 RR 323; 101 ER 785 (refd)
2 *Mason v Harvey* [1853] RR 784; 155 ER 1585 (refd)
3 *Farrell v Federated Employers Insurance Association Ltd* [1970] 3 All ER 632 (refd)
4 *Matthews v Continental Casualty Co* [1932] 4 DLR 667 (folld)
5 *Chiew Swee Chai v British American Insurance Co (M) Sdn Bhd* [1987] 1 MLJ 53 (refd)
6 *Bowskill v Dawson & Anor* [1955] 1 QB 13 (distd)
7 *Green v Russell* [1959] 2 QB 226 (folld)

*Ranjit Singh* (*Ranjit Singh & Co*) for the plaintiff.
*S Radhakrishnan* (*Shearn Delamore & Co*) for the first defendant.
*VS Viswanathan* (*Kean Chye & Sivalingam*) for the second defendant.

*Cur Adv Vult*

**Abdul Malek J:** The plaintiff, a professional jockey, had sued the first defendant, on his own behalf and on behalf of all the committee members of the Malayan Racing Association, the controlling body for trainers and jockeys, and the second defendant, the insurers of the first defendant upon the lives of trainers and jockeys including the plaintiff's, for S$163,000 or M$228,000 and interest, costs and further relief due under the policy of insurance No 859781 dated 28 October 1981 made between the first and the second defendants as a consequence of the plaintiff being medically certified on 4 December 1987 to be permanently disabled and unable to engage in his profession, occupation or employment following a fall from the horse he was riding on 20 March 1984.

From the evidence, the following facts are not disputed:

(a) the plaintiff was a professional jockey at the material times;
(b) his fall from the horse on which this claim is based was on 20 March 1984;
(c) he had seen Dr Balakrishnan the following day for injuries sustained in the fall;
(d) he had gone back to work as a professional jockey from 29 May 1984 up to 29 January 1986;
(e) the relevant insurance policy was entered into between the first and the second defendants on 28 October 1981 and the premiums had been paid by the first defendant to the second defendant;
(f) the plaintiff's fall on 20 March 1984 was never notified to the second defendant by the first defendant;

(g) the second defendant first knew of the plaintiff's fall from the plaintiff's solicitors' letter dated 2 August 1988;
(h) upon receipt of this letter, the second defendant had immediately repudiated liability;
(i) after the fall on 20 March 1984, the plaintiff had several other falls from horses he was riding; and
(j) the Medical Board was of the opinion that the plaintiff would be unable to return to professional competitive horseriding from 4 December 1987.

The plaintiff's first witness was Dr Pretnam Singh who testified that he was one of the three members of the Medical Board, the other two being Dr Amarjit Singh Gill and Dr Lau Fook Khean, inquiring into the plaintiff's case which sat on 17 June 1987 and 4 December 1987. On 17 June 1987, the Medical Board had decided that the plaintiff's complaints and clinical findings were consistent with those of residual neuritis and neuropathy from past disc compressions of the fifth lumbar spinal root resulting in reduction of the girth of the right calf, reduction in the power of dorsiflexion in the right ankle and right big toe. The plaintiff had had two previous disc operations performed by Dr Pasupathy and Dr Arumugasamy respectively, the second on 15 January 1987. Recent X-rays of the cervical spine and the lumbar spine, the CAT-scan of the lumbar spine and the muscle chart of the lower limbs were ordered to be produced by the next reassessment in six months' time and when the Medical Board reconvened on 4 December 1987, they decided that the plaintiff would not be able to return to professional competitive horseriding.

Under cross-examination by learned counsel for the first defendant, the witness confirmed that the Medical Board was not aware of the fracture of the first and the fourth lumbar vertebra after the initial fall as stated in Dr Balakrishnan's reports dated 2 April 1984 and 20 March 1985 as the X-rays submitted did not state this. He was also surprised that the disc prolapse between the fourth and fifth lumbar vertebra as stated in Dr Pasupathy's report dated 15 July 1986 was not seen on the CAT-scan.

The plaintiff then gave evidence that he had fallen off the horse on 20 March 1984 when he had sustained severe injuries. He said he was aware that all jockeys and trainers were covered by insurance as he had been informed by the Malayan Racing Association. He referred to the relevant insurance policy dated 28 October 1981 where the cover was S$163,000 for the period 10 October 1981 to 10 October 1982 and where his name was the fifth under the list of professional jockeys. He added that he attended the Medical Board twice which made a finding that he could not return to work as a professional jockey after which he did not apply for a riding licence. Since then, he had never been paid under the policy and in fact admitted that he had seen the relevant document only on the date of hearing. The plaintiff further stated that the first defendant never told him that they were making a claim for him under the policy nor did they tell him that he had a right to do so.

Under cross-examination by learned counsel for the first defendant, the plaintiff said that he knew he was covered by insurance in 1966 when he first took out his jockey licence but he had never asked for the particulars.

A He agreed that after Dr Balakrishnan had examined him on 21 March 1984, he was admitted till 2 April 1984 and had been given medical leave up to 16 April 1984 after which he was certified to resume work from 29 May 1984.

The plaintiff further stated that he continued to work as a professional jockey up to 14 March 1985 when he was admitted, for sudden back pain B while getting off a horse, up to 19 March 1985 and he was on medical leave till 31 March 1985. After that, the plaintiff testified that he continued in his profession for about nine months until 29 January 1986 when he was admitted to be operated on his back by Dr Pasupathy.

Under cross-examination by learned counsel for the second defendant, C he disagreed that he was not a party to the insurance policy although he agreed that he never paid any premiums. He also agreed that the first time his solicitors had written to the insurers about the matter was by letter dated 2 August 1988 and the reply from the second defendant dated 22 August 1988 was that they were repudiating liability. The plaintiff admitted under examination by the court that after 20 March 1984 he had fallen off the D horse many times before the Medical Board decision on 4 December 1987.

The second member of the Medical Board to give evidence for the plaintiff was Dr Amarjit Singh. He told the court that the Medical Board was convened on the instructions of the secretary of the Malayan Racing Association. He added that after the meetings, the Medical Board was E unanimous that the plaintiff was not able to return to professional competitive horseriding. The witness stated that the plaintiff had been operated on on 31 January 1986 and the findings were that he had a prolapsed disc between the fourth and fifth lumbar vertebra. There were no signs of improvement and he was referred to the witness in January 1987. The plaintiff was then referred to Dr Arumugasamy for a second opinion and a F second operation was done on 15 January 1987 following which the plaintiff made recovery. The witness went on to state that the prolapsed disc was pressing on the fifth lumbar nerve causing weakness and loss of sensation in the plaintiff's right leg. His opinion was that as the plaintiff had had the injury for three or four years prior to the operations, chances of full recovery G were rather remote.

Under cross-examination by learned counsel for the first defendant, this witness agreed that the Medical Board only examined the plaintiff in his state of condition in 1987 and he was not aware that the plaintiff had fallen off the horse several times since the fall on 20 March 1984. He agreed that it would be difficult for the Medical Board to ascertain from which fall the H disability arose. He also agreed that although Dr Pasupathy's report dated 15 July 1986 had mentioned of the damage to the fourth lumbar nerve root, the Medical Board had found residual damage to the fifth lumbar nerve.

The secretary of the Malayan Racing Association told the court that the normal retirement age of professional jockeys was between 40 to 50 years I depending on the individual jockey taking into account his weight, skill and medical condition. If a jockey exceeded the maximum riding weight of 54kg, his licence would have to be reviewed. The annual licence renewal depended on riding weight, medical examination and riding performance. A professional jockey who was forced to retire prematurely for some reason

or other could take alternative job employment as horse trainer or any stable management job such as stable supervisor, stable clerk, syce or groom.

Under cross-examination by learned counsel for the first defendant, he agreed that if any accident involved a professional jockey, the first defendant was to inform the second defendant within 30 days. At this stage, learned counsel for the first defendant informed the court that they were admitting that they did not inform the second defendant at all of the accident involving the plaintiff.

Under cross-examination by learned counsel for the plaintiff, the witness testified that for every race a professional jockey enters, 2% of the riding fee and prize money would be paid into the Malayan Racing Association Fund to aid professional jockeys and trainers in case of death and permanent disablement as a result of an accident. The moneys are also utilized to buy professional insurance cover for professional jockeys and trainers. When asked whether Dr Balakrishnan's letter dated 2 April 1984 was sufficient notice of the accident for the second defendant to be informed, the witness said he was not the secretary then but if he was, he would have informed the second defendant in any case after knowing of the fall without having to wait for such a letter.

He added that the plaintiff did not have a copy of the relevant insurance policy as the first defendant did not deliver a copy to any of the persons collectively insured thereunder. He agreed that the first defendant may have breached cl 3 of the policy by not informing the second defendant within 30 days of the plaintiff's injury. However, he admitted under re-examination that the cover was only as regards Part II of the policy and it was clear from Dr Balakrishnan's reports that the plaintiff did not suffer from any of the injuries enumerated under Part II. He also said that the plaintiff never informed the first defendant of the accident. On recall, the witness confirmed that as of 31 December 1988, the plaintiff had been paid S$28,118.05 for incapacitation allowance and that from 1 January 1988 the first defendant was paying the plaintiff M$750 a month instead of M$30 per day.

To my mind, the plaintiff's claim succeeds or falls on a proper construction of the insurance policy itself. Without doubt, the plaintiff is not a party to the contract of insurance as the relevant parties named therein are the first and the second defendants. The insured is 'the Malayan Racing Association on the lives of Trainers and Jockeys as per schedule attached to Hogg Robinson (FE) Private Limited, Suite 1001, 10th Floor, Wing On Life Building, 150 Cecil Street, Singapore 0106' and the beneficiary is 'Malayan Racing Association'. The plaintiff never paid any premiums. At the most, the plaintiff was just part of the insurable interest under the policy.

The endorsement to the policy states that:

> It is hereby agreed that the company shall be entitled to treat the insured the 'controlling body' as the absolute owner of this policy and shall not be bound to recognize any equitable or other claim to or interest in the policy and the receipt of the insured or the insured's legal representative alone shall be an effectual discharge.

It follows that the plaintiff has no right to claim under the policy.

Further, the second defendant had never been informed in writing of the accident within 30 days as required under cl 3 of the provisions of the policy. Following this, cl 18 of the same policy has made it clear that failure to comply with any of the provisions contained in the policy shall invalidate all claims under it.

Although the printed form of the policy refers to five kinds of benefits, namely, loss of life accident indemnity, dismemberment and loss of sight indemnity, weekly accident indemnity, elective indemnity and medical reimbursement expense, the first, third, fourth and fifth indemnities had been deleted and we are only concerned with the second which is reproduced here for ease of reference and comprehension:

> Part II — Dismemberment and Loss of Sight Indemnity
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> When injury does not result in loss of life of the Insured within one hundred eighty (180) days after the occurrence of the accident but does result in any of the following losses within said one hundred eighty (180) days, the Company will pay for loss of:
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> | | |
> |---|---|
> | Both Hands or Both Feet or Sight of Both Eyes | The Principal Sum |
> | One Hand and One Foot | The Principal Sum |
> | Either Hand or Foot and Sight of One Eye | The Principal Sum |
> | Either Hand or Foot | One Half of the Principal Sum |
> | Sight of One Eye | One Half of the Principal Sum |
> | Loss of Thumb & Index Finger of Either Hand | 10% of the Principal Sum |
>
> When as the result of injury and commencing within 180 days of the date of the Accident the Insured is totally and permanently disabled and prevented from engaging in each and every occupation or employment for compensation or profit for which he is reasonably qualified by reason of his education, training or experience, the Company will pay, provided such disability has continued for a period of twelve consecutive months and is total, continuous and permanent at the end of this period the principal sum less any other amount paid or payable under this policy as the result of the same accident, at the rate of one per cent per month for 100 months.
>
> 'Loss' as above used with reference to hand or foot means complete severance through or above the wrist or ankle joint, and as used with reference to eyes, means the entire and irrecoverable loss of sight.
>
> The occurrence of any specific loss for which indemnity is payable under this Part shall at once terminate all insurance under this policy, but such termination shall be without prejudice to any claim originating out of the accident causing such loss.
>
> No indemnity will be paid under any circumstances for more than one of the losses, the greatest, for which provision is made in this Part.

The evidence has clearly shown that although the plaintiff had the relevant fall on 20 March 1984 he had seen Dr Balakrishnan only on the following day. This raises the inference that the injuries were not that serious to warrant an immediate checkup. This fact is confirmed by a subsequent report by Dr Balakrishnan that the plaintiff was able to resume work on 29 May 1984 which he in fact did until 29 January 1986 when he had the first

of two operations before the two Medical Board hearings in 1987. The plaintiff himself had admitted that he had several other falls from horses after 20 March 1984 and it is obvious that after the three to three and a half years' delay, the Medical Board was not exactly in a position to ascertain which fall the disability arose from. A

Under the relevant Part II of the policy, the plaintiff has to be totally and permanently disabled and prevented from engaging in each and every occupation or employment for compensation or profit for which he is reasonably qualified by reason of his education, training or experiences as a result of injury and commencing within 180 days of the accident provided that such disability continued for a period of 12 consecutive months, and is total, continuous and permanent, at the end of that period. From the facts, the plaintiff has neither proved that the total and permanent disability had arisen within 180 days from the accident nor that it had continued for a period of 12 months after that. B C

As for the injuries, there had been some conflict as to the exact injuries from the fall on 20 March 1984 as Dr Balakrishnan in his examination on 20 March 1984 had stated that the first and fourth lumbar vertebra were fractured while Dr Pasupathy, after the first operation on 31 January 1986, had said that the fourth lumbar root was damaged. The decision of the Medical Board, after its second meeting on 4 December 1987, after both operations had been performed, found the injury to the fifth lumbar root. This is different from the findings of Dr Balakrishnan one day after the alleged fall and the report of Dr Pasupathy about 22 months after that. Could it then be said that the findings of the Medical Board three years and nine months after the relevant fall were related to the injuries sustained on 20 March 1984 or on subsequent falls? D E

As for the plaintiff's claim that he was deprived of the benefit and indemnity under the policy due to the negligence of the first defendant, the first defendant had conceded that the Malayan Racing Association did not give written notice to the second defendant but at the same time they have argued that the plaintiff had never informed them of this accident. Their only form of notice was through Dr Balakrishnan's letter dated 2 April 1984 but, as can be seen, there was no basis for the first defendant to notify the second defendant or make a claim because the injuries set out in the said report did not fall within the ambit of cover provided by the policy. In fact, Dr Balakrishnan's second report dated 28 May 1984 had stated that the plaintiff was fit to resume work on the following day. The first defendant had maintained that even if a written notice of the injury had been given within the time stipulated, the plaintiff will not be eligible for an indemnity as the risk was not covered by the policy. Going a step further, the first defendant's stand is that even if the plaintiff was considered to have proved that the first defendant had been in breach of all or any of the particulars of the negligence stated, he had still not proved that the breach caused the loss as the injuries and disablement did not fall within the scope of the insurance policy cover. F G H I

It is relevant at this juncture to refer to some case authorities on similar issues. As for informing the insurers of the claim, in *Worsley v Wood & Ors*,[1] it had been decided that if a policy of insurance referred to certain printed

proposals, these will be considered as part of the policy and since the stipulation was that persons insured shall give notice of the loss forthwith by way of certificate from reputable members of the parish as regards the loss, it was held that the procuring of such a certificate was a condition precedent to the right of the assured to recover.

Similarly, in *Mason v Harvey,*[2] where the condition indorsed on a policy of insurance required the assured to deliver to the insurance company full particulars of the loss sustained within three months thereof, it was held that the delivery of particulars was a condition precedent to the right of the assured to recover for the loss. In *Farrell v Federated Employers Insurance Association Ltd,*[3] the claim failed as the failure to notify the insurance company immediately of the writ was held to be a non-compliance with the condition precedent.

As for the issue of continuous permanent disability, the ruling in *Matthews v Continental Casualty Co*[4] was that where the insured after an accidental injury and receiving treatment and indemnity thereafter and believing himself to have completely recovered obtained similar employment and worked thereat for three weeks at the current wages before the original injury again disabled him, he could not recover further compensation for such employment broke the continuity of the disablement.

Where the loss was defined as 'dismemberment by severance at or above the wrist or ankle joint' and where the insured plaintiff had met with a road accident resulting in a complete loss of the function of his left upper limb but had declined to have it amputated despite medical advice, it had been held in *Chiew Swee Chai v British American Insurance Co (M) Sdn Bhd*[5] that the plaintiff's claim ought to be dismissed as the sanctity of the contract should be upheld and the limp arm served a cosmetic purpose and the plaintiff could not say he had lost it without the amputation. This only establishes the point that the insurance policy has to be given a very strict interpretation.

Learned counsel for the plaintiff had submitted that since the relevant insurance policy was paid out from moneys contributed by the professional jockeys and trainers into the Malayan Racing Association Fund, the contributors including the plaintiff must be regarded as beneficiaries under the trust established by the Malayan Racing Association who as legal owners are nothing but bare trustees to serve the purpose of the trust. As such, the benefit under the policy must go directly to people like the plaintiff. He had referred to *Bowskill v Dawson & Anor*[6] where it was decided, where a company had taken out a group life policy on the lives of its employees to which the employees including the deceased contributed, that:

> ... it is clear, in my opinion, that the members of the fund and their personal representatives had more than mere expectancies, dependent upon the goodwill of the employers, in relation to their life assurance benefits. In my judgment they had rights which the courts would recognise and enforce; and although those rights were conferred upon them by the scheme itself they were such as to entitle them as cestuis que trust to call upon the trustees to perform the trusts of the deed under which they benefitted and to seek the intervention of the court if need arose. It follows that if the trustees had upon Mr Dawson's death refused to claim from the insurance company the amount due under the policy and pay

the sum over to the defendants they could have applied to the court for an order upon the trustees to do so. Indeed, it may well be that, had the insurance company refused to pay and the trustees declined to sue, the defendants themselves could have sued the company adding the trustees as defendants to the proceedings. If such, then, was the position of the defendants, they are within the proposition to which I have earlier referred in that they had a right, enforceable in equity, to receive the moneys which became payable on Mr Dawson's death under the contract of insurance between Mars Security Ltd, and the insurance company; and such moneys ought not accordingly, in my judgment, to have been taken into account in assessing the damages payable to the defendants.

In the instant case, learned counsel had argued that the second defendant was under an obligation to pay the first defendant who were obliged to pay the plaintiff but the plaintiff could also claim the money directly from the defendants for breach of the policy and for refusal to pay respectively.

I must say I had found myself quite reluctant to consider this point as even if I had agreed with learned counsel for the plaintiff that the plaintiff was entitled to sue as a beneficiary under the trust established by the Malayan Racing Association, his claim, as stated earlier, would have been outside the ambit of the cover. In any case, I was further inclined to disagree with this contention as the endorsement in the policy has clearly stated that the first defendant is the absolute owner of the policy and the second defendant shall not be bound to recognize any equitable or other claim to or interest in the policy. This meant that only the first defendant could claim under it and no one else.

The position on this point, as correctly pointed out by learned counsel for the second defendant, is on all fours with the decision in *Green v Russell*[7] which had held that an employee under a group accident policy taken out by the employer was not entitled to any sum payable under the policy either at common law, because he is not a party to the contract, or in equity, because on a true construction of the policy the employer had not constituted himself a trustee for his employees. It must be observed that the similar endorsement as regards ownership of the policy in this case was included in the policy in that case. The facts of *Bowskill v Dawson & Anor*[6] are therefore distinguishable.

Learned counsel for the plaintiff had also attempted to distinguish the facts in this case with that of *Matthews v Continental Casualty Co*[4] as to the break in the total and permanent disablement by pushing the blame on Dr Balakrishnan, who they had chosen not to call to explain, by stating that he was not in a position to diagnose further neurological changes in the plaintiff when he examined him on 21 March 1984 and compelling the plaintiff to resume work, when he was not fit to do so, by issuing the certificate dated 28 May 1984.

To recapitulate, it was the plaintiff who had suffered the pain after the fall on 20 March 1984. He did not seek treatment immediately but on the following day. He was aware of the policy under which he was covered but he never personally informed the first defendant about the injury at any time. Despite further falls and further pain, he continued to work until 29 January 1986 which meant that he was able to ride for 21 months after the crucial fall. How then could he be totally and permanently disabled on 20

March 1984 which required him to be totally and permanently disabled and prevented from engaging in his profession for the required period of 180 days thereafter and this too if such disability had continued for a period of 12 consecutive months and is total, continuous and permanent, when he had continued to work until January 1986? The Medical Board finding on 4 December 1987 which was almost two years after that was too late in the day to make it fall under the scope of the insurance cover. Any incapacitation allowance he had received and was still continuing to get had certainly nothing to do with the policy and it surely must have been paid out from the Malayan Racing Association Fund to which the plaintiff contributed based on the Medical Board finding that he was no longer in a position to participate in competitive professional horseriding from 4 December 1987.

On the point of the plaintiff's injury not falling under the ambit of the insurance cover alone, despite the consideration of all the other points raised, the only conclusion that I could make and which I made was that the plaintiff's claim against both defendants ought to be dismissed with costs.

*Claim dismissed.*

Reported by Liu Hern Kuan